

**UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD**

**FP HOLDINGS, L.P., D/B/A PALMS CASINO RESORT**

**and**

**LOCAL JOINT EXECUTIVE BOARD OF LAS  
VEGAS, A/W UNITE HERE**

**Case No. 28-RC-217964**

**EMPLOYER'S REQUEST FOR REVIEW OF THE REGIONAL DIRECTOR'S  
DECISION AND CERTIFICATION OF REPRESENTATIVE**

Pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, FP Holdings, L.P. d/b/a Palms Casino Resort ("Palms" or the "Employer") hereby requests review of the Decision and Direction of Election ("Election Decision") and the Decision and Certification of Representative ("Certification Decision") issued by the Regional Director of Region 28 ("Regional Director") on April 23 and June 9, 2018, respectively.

**I. INTRODUCTION**

The Palms was acquired by Station Casinos LLC in October, 2016. Since then, it has been in a state of constant and planned change – including the opening of new bars and restaurants, the revamping of its main pool, the development of new ultra-luxury suites, the addition of nearly 60 new guestrooms, the expansion of casino space, and the shuttering of older restaurants and amenities that are inconsistent with the Palms' revitalized image. All told, Station Casinos has or will invest approximately \$620 million into modernizing the Palms into a world-class hotel-casino. These upgrades and renovations will have a commensurate effect on the Palms workforce. Relevant to this matter, these changes will substantially transform the makeup of the petitioned-for bargaining unit in the Representation Petition ("Petition") filed by

the Local Joint Executive Board of Las Vegas, Culinary Workers Union, Local 226 and Bartenders Union Local 165, Affiliated with UNITE HERE (“Union”), including the net creation of 273 new bargaining unit positions.<sup>1</sup>

Because of the effect of the ongoing Palms renovation on the composition of the petitioned-for unit, the Union’s Petition should have been dismissed by the Regional Director until a substantial and representative complement of employees, including these new employees, is hired at the Palms. Instead, after a hearing at which the Palms expansion was detailed, the Regional Director erroneously ordered that an election proceed for the petitioned unit. On June 9, the Regional Director issued the Certification Decision, certifying the Union as the representative of the bargaining unit.<sup>2</sup> As shown below Regional Director failed to conduct the case-specific analysis called for by Board precedent in cases of “expanding units” like the petitioned-for unit at the Palms and, in so doing, vitiated the Section 7 rights of the soon-to-be-hired group of employees to have a say in their representation. Accordingly, the Board should grant this request for review and vacate the erroneous Election and Certification Decisions.

## **II. BACKGROUND**

Despite the Regional Director’s erroneous conclusions regarding the bargaining unit, the Election Decision properly set forth the essential facts regarding the planned Palms modernization and expansion. Station Casinos acquired the Palms in October, 2016, and has since been undergoing significant upgrades and renovations. Election Decision at 2. Although

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<sup>1</sup> An additional pay period closure date passed between the hearing date and the issuance of the Election Decision, resulting in some (but not all) of the recently-hired employees within the Palms’ steakhouse being eligible to vote. That does not alter the Employer’s primary argument; the Regional Director erred by applying a mechanistic and rule-based analysis rather than the case- and context-specific analysis required by *Toto Indus.*, 323 N.L.R.B. 645, 645 (1997). Further, the hiring of these employees demonstrates the certainty of the Employer’s plans.

<sup>2</sup> The Election Decision is attached as Exhibit 1 and the Certification Decision is attached as Exhibit 2.

some of the work has been completed, Palms' transformation remains in progress. As noted in the Election Decision, within the upcoming year, Palms will:

- Open a new steakhouse called "Scotch 80" that will be operated by Palms and employ approximately 71 additional bargaining unit team members;
- Open "Center Bar" and another casino floor bar, adding at least 25 bargaining unit team members;
- Add premium, ultra-luxury suites and approximately 60 new guestrooms, adding at least 36 bargaining unit team members;
- Upgrade and expand its casino space, adding approximately 27 bargaining unit team members;
- Revamp and expand its catering spaces, adding 33 bargaining unit team members;
- Renovate its Team Member Dining Room;
- Open a new spa & salon; and
- Open a number of new restaurant, bar and club concepts.

*Id.* at 3. All of these changes are expected to be completed or substantially completed within the next year, with many (such as the openings of the Scotch 80 steakhouse and "Center Bar") to have been completed within 2-3 months after the Petition was filed. All told, Palms expects a net addition of 273 potential bargaining unit employees before the end of next year.

On April 6, 2018, in the midst of these ongoing transformations, the Union filed its Petition. The Regional Director issued the Election Decision on April 23, and the election was held on April 27-28, 2018. The Union received a majority of the valid votes cast. The Regional Director subsequently issued the Certification Decision on May 9, 2018.

### **III. THE REGIONAL DIRECTOR ERRONEOUSLY ORDERED AN ELECTION BEFORE A SUBSTANTIAL AND REPRESENTATIVE COMPLEMENT OF EMPLOYEES WAS HIRED**

The Regional Director ordered the election to proceed despite the uncontroverted hearing evidence that the Employer is in the midst of a major expansion that will have a significant effect

on the size of the petitioned for bargaining unit. While the right of current employees to select or reject a bargaining representative is significant, the Board “does not desire to impose a bargaining representative on a number of employees hired in the immediate future, based upon the vote of a few currently employed individuals.” *Toto Indus.*, 323 N.L.R.B. 645, 645 (1997). In these “expanding unit” cases, the Board must determine whether the current employee complement is “substantial and representative” of the final workforce composition. *Id.* In doing so, the Board avoids “any hard and fast rules,” and instead utilizes a case-by-case approach considering nine factors:

- (1) the size of the present work force at the time of the representation hearing;
- (2) the size of the employee complement who are eligible to vote;
- (3) the size of the expected ultimate employee complement;
- (4) the time expected to elapse before a full work force is present;
- (5) the rate of expansion, including the timing and size of projected interim hiring increases prior to reaching a full complement;
- (6) the certainty of the expansion;
- (7) the number of job classifications requiring different skills which are currently filled;
- (8) the number of job classifications requiring different skills which are expected to be filled when the ultimate employee complement is reached; and
- (9) the nature of the industry.

*Id.*; see also *K-P Hydraulics Co.*, 219 N.L.R.B. 138, 138 (1975) (ordering dismissal of petition where employer did not employ a substantial and representative complement of employees); *Some Indus., Inc.*, 204 N.L.R.B. 1142, 1143 (1973) (dismissing petition as premature even though employer had hired a “substantial” complement of employees).

Here, the factors correctly applied weighed in favor of dismissal of the instant Petition, without prejudice to re-filing once a substantial and representative complement of employees is

hired. *K-P Hydraulics*, 219 N.L.R.B. at 138. First, the employees disenfranchised by the Regional Director's decision to direct the election is substantial – approximately 273 employees, representing a 33% increase over current headcount. Second, the expansion plans are immediate, definitive, and scheduled to be completed in the near future, such that the burden on existing employees' right to obtain representation is comparatively slight as weighed against the total disenfranchisement of the prospective employees. Accordingly, when considering the impact of the relatively minor delay in the right of existing employees to obtain representation as against the complete loss of prospective employees' Section 7 rights to choose to engage in or refrain from joining a union, the balance properly weighed in favor of dismissing the petition until a representative complement is hired.

The Regional Director erred in applying the expanding unit factors to the unit at issue here. Rather than considering all of the case-specific factors applicable to the instant Petition based on the evidence presented by the Palms, the Regional Director employed a rigid, mathematical analysis in deciding that there was a substantial and representative component of the unit in place. This mechanistic, bright-line approach was of the type explicitly rejected by the Board in *Toto* –which cautioned against “hard and fast rules” and demanded a case-by-case, fact specific reckoning. In applying this erroneous analysis, the Regional Director ignored the evidence presented by the employer of the near-term imminence and certainty of the unit expansion and disregarded the disenfranchising effect of an immediate election on the large number of workers to be added to the unit. Accordingly, the Board should grant this request for review and vacate the Regional Director's decision.

#### IV. CONCLUSION

For the reasons set forth above, the Regional Director's Certification Decision should be set aside and the results of the election should be vacated.

Respectfully Submitted,

Date: May 21, 2018

/s/ Harriet Lipkin  
Harriet Lipkin  
DLA Piper LLP (US)  
500 Eighth Street NW  
Washington, D.C. 20004

Kevin Harlow  
DLA Piper LLP (US)  
401 B Street, Suite 1700  
San Diego, CA 92101

## CERTIFICATE OF SERVICE

I hereby certify this 21st day of May, 2018, that a copy of the Request For Review of the Regional Director's Decision and Certification of Representative was electronically served on the Board and on the Region through the Board's electronic filing system, and also served on:

Christopher J. Giardina  
Elise Oviedo  
National Labor Relations Board  
Las Vegas Resident Office  
Foley Federal Building  
300 S. Las Vegas Blvd. Ste. 2-901  
Las Vegas, NV 89101  
Christopher.Giardina@nlrb.gov  
Elise.Oviedo@nlrb.gov

Eric Myers  
McCracken, Stemerman & Holsberry, LLP  
595 Market Street, Suite 800  
San Francisco, CA 94105  
ebm@msh.law

Geoconda Arguello Kline  
1630 S. Commerce St.  
Las Vegas, NV 89102  
gkline@culinaryunion226.org

/s/ Kevin Harlow  
An Employee of DLA Piper LLP (US)